

REMARKS

Applicants respectfully request that the Examiner reconsider the finality of the rejection in the Office Action of October 13, 2006. Because the new grounds of rejection were not necessitated by the amendment made to Claim 1, Applicants submit that the final rejection of the claims in this application was premature under MPEP 706.07(d).

The Office Action of October 13, 2006, states in items 6 through 11, pages 3 to 8, that Claim 1 is included in "New rejections based on the amendment." In item 13 on page 8 of the Office Action of October 13, 2006, the Examiner states, "Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action." However, Claim 1 as amended is identical in substance to deleted Claim 11, which had previously depended upon Claim 1.

Claim 1 and Claim 11 originally read as follows:

1 (original). A peptide comprising an Acetyl CoA carboxylase (ACCase) having a deleted biotin binding domain, having a deleted carboxy transferase domain, and having a functional biotin carboxylase domain.

...11 (original). The peptide according to claim 1, wherein said peptide binds to soraphen.

In Applicants' Amendment and Response to the Office Action dated May 9, 2006, submitted by Applicants on August 9, 2006, the claims were amended as follows:

1 (Currently amended). A peptide comprising an Acetyl CoA carboxylase (ACCase) having a deleted biotin binding domain, having a deleted carboxy transferase domain, and having a functional biotin carboxylase domain, wherein said peptide binds to soraphen.

11 (canceled).

Therefore, Claim 1 as amended is original Claim 11 rewritten in independent form.

Under MPEP 706.07(a), "...a second or any subsequent action on the merits in any application...will not be made final if it includes a rejection, on newly cited art, ...of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art."

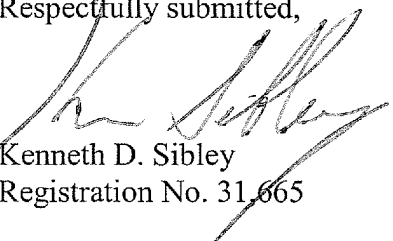
Please note the fact that claim 11 was free of prior art rejections in the first Official Action, and Applicants amended claim 1 to incorporate claim 11 in good-faith reliance on that fact, and in a good-faith effort to narrow the issues. Entry of a new ground of rejection against an originally presented claim after such good-faith reliance is clearly prejudicial to the Applicant.

Because Claim 1 as amended did not substantively alter original Claim 11, Applicants respectfully submit that the new rejections cannot be based on Applicants' amendment, and therefore the finality of the rejections is premature.

CONCLUSION

In view of the remarks presented herein, Applicants respectfully submit that the finality of the Office Action of October 13, 2006, be withdrawn as premature under MPEP § 706.07(d), which action is respectfully requested.

Respectfully submitted,



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